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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

CYNTHIA BARCELO BLAKE,

Petitioner,

v.

SCHELIA A. CLARK, Warden,

Respondent.

No. 07-CV-2899 CW  
E-FILING CASE

RESPONDENT'S NOTICE OF MOTION  
AND MOTION TO DISMISS AS MOOT

Date: November 15, 2007  
Time: 2:00 p.m

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that, on the above-referenced date and time, before the Honorable Claudia Wilken, United States District Judge, 1301 Clay Street, Oakland, California, in Courtroom 2 on the 4<sup>th</sup> Floor, or soon thereafter, the Federal Respondent, by and through their attorney the United States Attorney for the Northern District of California, will bring the following Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and Local Rule 7. This motion is based on the Notice of Motion and Memorandum of Points and Authorities contained in this motion, the declaration filed concurrently herewith, such oral and documentary evidence as may be presented at the hearing on the motion, and any other factors

that this Court may wish to consider.

### **MEMORANDUM OF POINTS & AUTHORITIES**

Petitioner Cynthia Blake ("Petitioner") was a federal prisoner who was housed at the Federal Correctional Institution ("FCI") at Dublin, California, when she filed the habeas petition in the instant case. Petitioner challenged a Bureau of Prisons ("BOP") regulation that limited an inmate's placement in a Residential Reentry Center ("RRC") to 10% of their sentence, not to exceed six months. *See* 28 C.F.R. § 570.21(a). Consequently, Petitioner sought consideration for the full six months of RRC, without the 10% limitation. As Petitioner has been released from BOP custody on September 13, 2007, this case should be dismissed for mootness.

On August 17, 2007, Respondent filed an Answer and Opposition in this case. At that time, Respondent submitted documents in support of their Answer indicating that Petitioner's release date was January 12, 2008, and that her 10% date was on December 8, 2007. *See* Exhibit 2 to Kim Beakey Declaration filed in support of Respondent's Answer. These dates reflected the duration of Petitioner's sentence as she was serving a 12 month sentence. *Id.* at Exhibit 1.

On September 11, 2007, Petitioner's sentence was reduced to eight months by the sentencing judge, the Honorable Morrison C. England, United States District Court in the Eastern District of California. *See Exhibit 1* to the Declaration of Bobbi Butler filed in support of this motion to dismiss. Subsequently, on September 13, 2007, Petitioner's sentence computation was changed by the BOP, and she was determined to have completed her sentence. *Id.* On this same date, Petitioner was released from BOP custody. *Id.*

Because of her release from BOP custody, Petitioner can no longer receive any of her requested relief. As a result, Petitioner's habeas petition has become moot and should be dismissed. *North Carolina v. Rice*, 404 U.S. 244, 246 (1971) ("federal courts are without power to decide questions that cannot affect the rights of litigants in the case before them"); *Mitchell v. Dupnik*, 75 F.3d 517, 528 (9th Cir.1996); *see also Harvey v. Eichenlaub*, 2007 WL 2782249 (E.D. Mich.) ("Because Petitioner has been released from BOP custody completely, the Court concludes that there remains no actual injury which the Court would redress with a favorable

decision.”)

**CONCLUSION**

As Petitioner is no longer in BOP custody, Respondent respectfully requests that this habeas petition seeking consideration for extra RRC time be dismissed as moot.

Dated: October 1, 2007

Respectfully submitted,

SCOTT N. SCHOOLS  
United States Attorney

By: /s/  
Dennis M. Wong  
Special Assistant U.S. Attorney

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is an employee of the U.S. Department of Justice, and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

**NOTICE OF MOTION AND MOTION TO DISMISS AS MOOT & PROPOSED ORDER  
TO DISMISS CASE AS MOOT**

to be served this date upon the party in this action by placing a true copy thereof in a sealed envelope, and served as follows:

  X   **FIRST CLASS MAIL** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

       **PERSONAL SERVICE (BY MESSENGER)**

       **FACSIMILE (FAX)** Telephone No.:

to the parties addressed as follows:

Cynthia Blake (*pro se*)  
1200 William Way  
Roseville, CA 95678

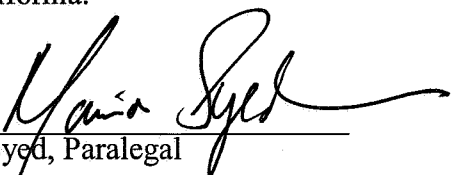
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Service only provided electronically via ECF:

Ernest Galvan, Esq., (Counsel for Leslie D. Mower)  
Rosen, Bien & Galvan, L.L.P.  
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S.F., CA 94104

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 1<sup>st</sup> day of October, 2007, at Dublin, California.

  
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Maria Syed, Paralegal